SARS powers vs taxpayer’s rights in a payroll audit

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PAYE Audits: Powers vs Rights

- Purpose of a PAYE audit
- Selection basis for an audit
- Authority to conduct an audit
- Notice of an audit
- Scope of the audit
PAYE Audits: Powers vs Rights

- Request for information
- Communication during audit
- Letter of findings
- Additional assessment
- Objection
- Dispute Resolution
Purpose of a PAYE audit

- SARS is responsible to administer the Tax Acts
- A PAYE audit is a method to determine the
  - Accuracy of information submitted; and
  - General compliance of the employer
Purpose of a PAYE audit

“Administration of the tax Act” means to

- Obtain full information in relation to:
  - anything that may affect the liability of a person or a taxable event
- Ascertain whether a person has filed correct returns and information
- Determine the liability of a person for tax
- Investigate whether a tax offence has been committed
- Enforce SARS’ powers and duties under a Tax Act
Selection basis for an audit

- Risk assessment basis
  - Assessing the risk profiles of a employer
- Random selection basis
  - A spot check
  - Based on random factors
  - Risks are not clear from returns
Selection basis for an audit

- Phishing expedition
- Promotion of Administrative Justice Act
  - What is an administrative action?
  - Employer may request reasons
  - Procedural fairness
Authority to conduct an audit

• SARS official must be authorised to conduct an audit
  • Authorisation document to be issued by a senior SARS official
• SARS official must produce the document to employer
• Employer can request identification of the SARS official
• Employer has the right to deny the SARS official access to the premises
• Does an audit violate the taxpayer’s constitutional right to privacy?
Notice of an audit

• Impromptu visits to premises to conduct an audit

• Formal prior notice must be in writing
  • When...Where...What

• Notice must be issued at least 10 days before the audit commences

• The taxpayer must receive adequate time to prepare for the audit or request postponement
Scope of the audit

- SARS must specify the scope of the audit
  - What areas will be covered?
  - What is the purpose of this audit?
- Employer will be able to determine whether the information requested is relevant to the scope of the audit
- Employer will be able to determine whether it should request an extension to provide information requested
Request for information

• SARS can request relevant material from the employer or a third party

• Information requested from third parties is limited to records maintained or that should be reasonably maintained

• Reasonable time in which to submit

• Information must be provided in the format that it is kept
Request for information

• An employer should not be obliged to manipulate data if it not readily available and accessible

• Information already provided to SARS?

• An employer can requests reasons on relevance of the data

• Should SARS be granted full access to payroll systems?
Request for information

• Can SARS request information for a period exceeding 5 years?
• SARS can interview employees
• Is the employer obliged to complete the SARS PAYE questionnaire?
• And POPI?
Communication during audit

• Communication must be in writing, record meetings and discussions

• SARS is obliged to keep an employer informed of the progress of the audit

• An employer has the right to engage the services of a tax advisor

• Keep copies
Letter of Findings

• SARS should provide a letter of findings within 21 business days after conclusion of the audit

• Reasons must be provided that substantiate the finding

• The employer will have at least 21 business days to respond to the findings
Letter of Findings

• Employer can request extension to respond if there are reasonable grounds

• SARS should issue a letter of findings despite the fact that there was no non-compliance or the audit was inconclusive

• A letter of findings does not constitutes a valid assessment
Additional Assessment

• An additional assessment can be raised within 21 business days
• SARS must provide adequate and detailed reasons
• The letter of findings does not constitute adequate reasons for the issuing of an additional assessment
Objection

• If the employer disagrees with the assessment it has the right to object to the assessment within 30 days from the issue date

• The employer must provide detailed grounds of objection

• SARS can allow or disallow the objection in part or in whole
Objection

• The dispute resolution rules promulgated under section 103 of the TAA do not compel SARS to provide reasons for the disallowance of the objection

• In terms of PAJA the employer has the right to requests reasons from SARS
Dispute resolution

• Appeal to the tax board or tax court
• By mutual agreement SARS and the employer may attempt to resolve the dispute through ADR
• The decision of the ADR hearing is not binding on SARS or the taxpayer
• Pay now argue later